

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 9, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on March 9, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Tina Goodmann, Vice-Chairman
Betty M. Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEB. 9, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Mr. Andrews moved to approve the minutes as submitted, Ms. Gibson seconded, and the motion carried 6-0. The Board members signed the minutes. (Chairman Higgins does not vote unless noted.)

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board regarding the Opinion and Order issued by the Franklin Circuit Court on the appeal of *Education Cabinet v. Brenda Hendrix*, 06-CI-1130 (Appeal No. 2005-339). Judge Phillip Shepherd affirmed the Order of the Board, noting an error pertaining to the date of back pay to be changed from April 16, 2005, rather than April 7, 2005. [Citing KRS 18A.125]

Mr. Sipek advised he participated in an oral argument in the Court of Appeals on *Boles v. Environmental & Public Protection Cabinet*, a case that dealt with hazardous duty retirement.

Mr. Sipek advised the Board that staff had training on the Concordance database software on the Attorney General's database pertaining to the Special Grand Jury documents. Some research has been done and documents found, but the Board will need to request release of these documents through Judge Rhorer.

4. **PERSONNEL CABINET'S REPORT**

Hon. Anne Burnham, Staff Attorney for the Personnel Cabinet, advised the Board that a memo was sent out to all Cabinet Secretaries regarding reorganization training. This training assists Cabinet level officials going through the reorganization process on how to prepare documents. She extended an invitation to the Board Members to attend.

Ms. Burnham advised that the Personnel Cabinet will provide a presentation (about fifteen minutes) on KHRIS (Kentucky Human Resources Information System) before the April Board Meeting.

Mr. Johnny Keene, Personnel Cabinet, discussed the Employee Performance Evaluation [pursuant to KRS18A.110 and 101 KAR 2:180] process with the Board and provided handouts. He stated that all new supervisors are mandated to attend a one-day training, entitled "Performance Matters." The focus is on improving the quality of evaluations. He informed the Board that over 5,000 new supervisors have been trained. Ninety-eight (98%) percent of the agencies are in compliance of providing Employee Performance Evaluations. Eighty (80%) percent of the employees are receiving the two highest ratings. Supervisors are reminded on how important it is to document work results to justify these ratings, should they be audited. Annual leave awarded to employees with the two highest ratings are an incentive to ensure compliance. Mr. Keene invited the Board Members to attend one of the monthly training sessions.

5. **PETITIONED POSITIONS - None**

6. **ORAL ARGUMENTS**

A. Cherilyn Allen v. Cabinet for Health and Family Services

Present were Hon. Paul Fauri, counsel for the Appellant, who had requested oral arguments; and Hon. Nora McCormick, counsel for the Appellee. The parties answered questions from the Board.

B. Goble Cantrell v. Department of Corrections

Present were Hon. Angela Cordery, counsel for the Appellee, who had requested oral arguments, and Hon. Robert Bullock, counsel for the Appellant. The parties answered questions from the Board.

- C. Kyle Howard and James Stevens v. Cabinet for Health and Family Services
(Moved to April Meeting Pending Settlement)

7. **CLOSED SESSION**

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), (j) and (k), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:15 a.m.)

Ms. Gibson moved to return to open session, Ms. Hendricks seconded, and the motion carried 6-0. (12:28 p.m.)

8. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the hearing officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

Ms. Center had to leave the meeting early, but wanted to participate in voting on certain cases, these cases were taken out of agenda order:

- E. Gary Gardner v. Department of Juvenile Justice

Ms. Gibson moved to note Appellant's Exceptions, Appellant's Addendum to Exceptions and Appellee's Response to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

- D. Ruth Walker v. Cabinet for Health and Family Services – 2 appeals
(Deferred from February meeting)

Ms. Center moved to note Appellant's exceptions and Appellee's response and to accept the Final Order as altered and attached to these minutes, sustaining one appeal and dismissing the other. Ms. Gibson seconded and the motion carried 6-0.

G. Jacqueline Brooks v. Cabinet for Health and Family Services - 2 appeals

Ms. Center moved to accept the recommended order dismissing the appeals. Mr. Frazer seconded and the motion carried 6-0. [At this point, Ms. Center left the meeting.]

A. Cherilyn Allen v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellant's exceptions and Appellee's response and oral argument and to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

B. Goble Cantrell v. Department of Corrections

Ms. Hendricks moved to note Appellant's exceptions and Appellee's response and oral argument and to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 5-0.

C. Kyle Howard and James Stevens v. Cabinet for Health and Family Services
(Moved to April Meeting Pending Settlement)

F. Carla Peak v. Department of Corrections and Personnel Cabinet

Ms. Hendricks moved to note Appellant's Exceptions, Appellee Personnel Cabinet's Response and Appellee Justice Cabinet's Response, and to accept the recommended order (with clerical corrections) in accordance with the Final Order attached to these minutes. Mr. Frazer seconded and the motion carried 5-0.

H. David Curtis and Edwin Wickliffe v. Department of Agriculture
(Move to April Agenda)

I. Frank Derr v. Department of Juvenile Justice

Mr. Frazer moved to accept the recommended order (with clerical corrections) sustaining the appeal in accordance with the Final Order attached to these minutes. Ms. Gibson seconded and the motion carried 5-0.

J. Jimmy Farley v. Administrative Office of the Courts

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

K. Brenda Hendrix v. Education Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

L. Lisa Hulette v. Department of Corrections and Miranda Purvis

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

M. Linda Merritt v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

N. Carlos Spicer, Jr. v. Environmental and Public Protection Cabinet

Mr. Andrews moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

O. David Tucker v. Department of Veterans' Affairs

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

P. Pamela Embrey v. Education Cabinet

Q. Wesley Johnson v. Department of Veterans' Affairs

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeal. Ms. Gibson seconded and the motion carried 5-0.

9. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Andrews seconded and the motion carried 5-0.

- A. Michael Antosh v. Department of Corrections
- B. Tina Babbs v. Cabinet for Health and Family Services
- C. Patricia Bunt v. Department of Corrections
- D. Larry Caudill v. Cabinet for Health and Family Services and Personnel Cabinet
- E. Eric Dodson v. Personnel Cabinet
- F. Jeffrey Downey v. Cabinet for Health and Family Services
- G. Tina Graves v. Department of Juvenile Justice
- H. Jackie Johnson v. Personnel Cabinet
- I. David Kidd v. Personnel Cabinet
- J. Lyman Morris v. Cabinet for Health and Family Services
- K. Winifred O'Conner v. Department of Juvenile Justice
- L. Christine Riley v. Personnel Cabinet
- M. Joseph Tucker v. Personnel Cabinet (2 appeals)
- N. Alisha Ward v. Personnel Cabinet
- O. Rebecca Biven v. Personnel Cabinet
- P. Nelson Crawford v. Transportation Cabinet
- Q. Michelle Linville v. Personnel Cabinet
- R. Susan Moran v. Personnel Cabinet (3 appeals)
- S. Ronald James Pullen v. Personnel Cabinet

10. **SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 5-0.

- A. Jennifer Lunsford v. Finance and Administration Cabinet
- B. Sheri Wright v. Cabinet for Health and Family Services
- C. Matthew Long v. Department of Parks
- D. Connie Makranszky v. Cabinet for Health and Family Services

11. **MOTIONS TO ENFORCE BOARD ORDERS**

- A. Lenny Ausbrooks v. Transportation and Marjorie Ann Stewart

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 5-0.

B. Lowell Workman v. Cabinet for Health and Family Services

Ms. Gibson moved to defer this matter, but requesting proof of compliance, to the next meeting of the Board. Ms. Hendricks seconded and the motion carried 5-0.

12. **OTHER**

A. Approval of Annual Report

Mr. Frazer moved to accept the Personnel Board's Annual Report for Fiscal Year 2006 (with clerical corrections). Mr. Andrews seconded and the motion carried 5-0.

B. Possible changing of the June Board meeting date

Mr. Frazer advised the Board Members that he has a trial scheduled for the same date as the June 21, 2007 Board Meeting. After much discussion, the Board agreed to have the meeting on June 21 as scheduled, as long as there were enough members to form a quorum.

Further, Ms. Hendricks advised that she may not be able to attend the May 2007 Board Meeting and Ms. Gibson advised that she will not be able to attend the July 2007 Board Meeting.

Mr. Andrews asked if it would be easier for staff, agencies, and Board Members to have complete amended Findings of Facts, Conclusions of Law and Recommended Orders instead of altered orders. He stated it was cumbersome to review two documents together to see what was changed. Mr. Sipek advised that substantive changes could be prepared as the Board wants it. Chairman Higgins stated that this could be done on a case-to-case basis and Mr. Andrews agreed.

On another issue, Mr. Andrews was unclear whether the Personnel Cabinet Secretary can expunge written reprimands. Mr. Sipek stated there is no written authority; however, if a request is made by an agency to expunge a written reprimand, and there is no reason not to, the Personnel Cabinet is doing that.

In order for the Board to save postage, Ms. Hendricks suggested that packets be picked up by Board members on Board meeting days instead of mailed. Mr. Sipek agreed and would convey to staff to have them ready.

There being no further business, Ms. Hendricks moved to adjourn, Ms. Gibson seconded, and the motion carried 5-0. (12:50 p.m.)

Greg Higgins, Chairman

Tina Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member